IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Bhogi Ram & others Vs. Patara

S.B. CIVIL SECOND APPEAL No.66/1993

Date of Judgment ** April 24, 2006

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. Shiv Charan Gupta for the plaintiff-appellants.
None for the respondent despite service.

BY THE COURT:

1. This second appeal is by the plaintiff against the judgment and decree dated 15.9.1992 which was filed by the defendant.

2. The plaintiff had filed the suit claiming easementary right and encroachment made in a joint lane between the two houses in the length about 17'x 4" and 4 1/2' from the south corner and 3 ½' from the north corner. According to the plaintiff, the defendant had constructed a wall in the said joint lane whereby obstructed his light and air.

3. The suit was decreed by the trial court on 8.9.1981.

4. The defendant filed the first appeal which was partly allowed by the Appellate Court. However, while deciding the issue Nos.5 & 5A the learned first Appellate Court had clearly observed that defendant had no right to construct a wall in the said joint lane and, therefore, decree in this respect directing the defendant to remove the said encroachment was upheld by the first Appellate Court.

5. However, the learned first Appellate Court observed that since para No.5 of the plaint described the easementary right of the plaintiff only in respect to Parnala (spout) and did not specify about any ventilator on the western side of the wall of his house, no relief was required to be given. Learned counsel for the appellant submits that these observations of the first Appellate Court might come in his way effecting his easementary rights of light and air through the said ventilation, on his wall.

6. Nobody appears for defendant-respondent in the present appeal despite service.

7. Having heard the learned counsel for the appellant, this Court is of the view that in view of the finding given by the first Appellate Court upholding the decree directing the defendant to remove encroachment by way of wall in the said joint lane, there is no way that the defendant could encroach upon the easementary right of the plaintiff in any manner right of the ventilation also. Therefore, the observations if any made by the first Appellate Court in this regard cannot be said to be prejudicial to the right of the plaintiff in this regard.

8. Consequently, this second appeal has no force and the same is accordingly disposed of.

(Dr.VINEET KOTHARI),J.

VS/